

*Please see below for key excerpts from the Supreme Court's decision, selected and translated by Dejusticia.*

**Luis Armando Tolosa Villabona**

Reporting Judge

STC4360-2018

Number: 11001-22-03-000-2018-00319-01

(Approved in session on April 4th, 2018)

Bogotá, D.C., fifth of april of twenty eighteen (2018)

Deciding the appeal filed against the sentence on February 12th, 2018, issued by the Civil Chamber Specialized in Land Restitution of the Superior Court of the Judicial District of Bogotá on the *tutela* established by Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, José Daniel and Félix Jeffry Rodríguez Peña, among others, against the Presidency of the Republic, the Ministries of Environment and Sustainable Development and Agriculture and Rural Development, the Special Administrative Unit of Natural National Parks, and the Governorships of the Amazon, Caquetá, Guainía, Guaviare, Putumayo and Vaupés, for the “increased deforestation in the Amazon.”

### **1. Background (p.1)**

1. The plaintiffs plead for the protection of “supralegal” rights, highlighting those of “enjoying a healthy environment,” life, and health, allegedly violated by the accused.
2. They argue as a basis for their claim, in summary, the following:

2.1. As a first measure, they are identified as

“(…) a group of 25 children, adolescents, and young adults... between 7 and 25 years of age, living in cities that are part of the list of cities most at risk due to climate change... [With] a hope to live for 78 years on average (75 years for men and 80 for women) which is why they expect to develop their adult life between 2041-2070 and in their old age from 2071 onwards. In those periods of time, according to the climate change scenarios presented by IDEAM, the average temperature in Colombia is expected to increase by 1.6° C and 2.14°C, respectively (...)”

2.2 They explain that in the Paris Agreement and in Law 1753 of 2015, the government acquired national and international commitments to achieve “...*reduction of deforestation and the emission*”

*of greenhouse gases in a context of climate change...*” among which, the obligation to “reduce the net rate of deforestation to zero in the Colombian Amazon by 2020” stands out.

2.3 Despite the foregoing, they report that in the “early Warning Deforestation Bulletin (AT-D) of the first semester of 2017,” jointly prepared by the Ministry of Environment and Sustainable Development and IDEAM, it was concluded that “...the Amazon is the region with the highest AT-D of the country, with 66.2% of the total...”

Additionally, the “*Comprehensive Strategy for Controlling Deforestation and Management of Forests in Colombia*,” reported that the country lost 178,697 hectares in 2016, that is, that deforestation increased by 44% from the figure reported in 2015...” and, of that number, 70,074 hectares were in the Amazon.

They expose the causes of the phenomenon as “*land grabbing (60-65%), illicit crops (20-22%), illegal extraction of mineral deposits (7-8%), infrastructure, agro-industrial crops, and the illegal extraction of wood(...)*”

2.4 They affirm that “*deforestation in the Amazon has consequences not only in that region, but also in the ecosystems of the rest*” of the national territory, among which they list:

“(...) 1) *The negative alteration of the water cycle; 2) the alteration of the soils to capture and absorb water when it rains (and the consequent floods that this generates); 3) changes in the water supplies that reach the páramos<sup>1</sup> and that in turn provide water for the cities where the plaintiffs live; and 4) global warming due to carbon dioxide emissions that in non-deforestation conditions are stored in forests (...)*”

2.5 According to what is argued, the above is relevant because those convened have not adopted the appropriate measures to deal with this eventuality and, in addition, this has dire consequences for the places of their residence, alternating their living conditions, and cutting off the possibility of “enjoying a healthy environment.”

*p. 4-5 lists the main arguments and petitions of the tutela, p. 6-9 includes details about the defendants’ response, p.9-10 explain the appeal where the plaintiffs argue that a) the tutela is the ideal mechanism for this lawsuit, and b) the deforestation in the Amazon implies an irreparable harm.*

14. Daniel M. Galpern, attached an amicus “on behalf of” James E. Hansen, Director of Climate Science, Awareness and Solutions at the Earth Institute at Columbia University (USA), instating that the aforementioned scientist supported the protection:

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<sup>1</sup> Páramo is a special alpine tundra ecosystem in Colombia

“While we are late in acting with purpose to arrest global warming, the precautionary principle still counsels us to act now to avert calamitous climate change before every last detail is fully known (or fully appreciated). Similarly, while sea level rise and ocean acidification derived from deforestation-induced regional and global warming conflicts with the fundamental rights and interests of the present generation, it will impact and thus violate the rights of future generations more severely still.”

“Accordingly, the principle of intergenerational equity compels action without further delay so as not to burden disproportionately young persons and future generations. As well, the principles of solidarity, participation, and the best interest of children counsel consideration of interests retained by persons beyond those wielding present political authority. Considered interests, as well, must not be limited to those within the specific region of this Court’s usual jurisdiction. Neither should they be limited to those of the present generation.”

## **2. Consideraciones (p.10)**

*p. 10-13 discusses procedural details regarding the tutela process. In the first ruling, the District Court argued that the tutela was not an adequate mechanism to file this particular action because of the collective nature of the problem. However, a tutela can be filed as long as it i) shows the connection between the violation of collective and fundamental or individual rights, ii) the person filing the tutela is the person directly affected, iii) the violation of a fundamental right is not hypothetical but fully proved, and iv) the judicial order must be oriented towards restoring individual rights, and not collective ones.*

(p. 13)

By virtue of what has been said, it can be preached, that the fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem. Without a healthy environment, subjects of law and sentient beings in general will not be able to survive, much less protect those rights, for our children or for future generations. Neither can the existence of the family, society or the state itself be guaranteed.

The increasing deterioration of the environment is a serious attack on current and future life and on other fundamental rights; it gradually depletes life and all its related rights. The inability to exercise the fundamental rights to water, to breathe pure air, and to enjoy a healthy environment is making Colombians sick. It also increases the lack of fresh water and decreases the ability to enjoy a dignified life.

Therefore, in this case, the exceptional proceeding of the *tutela* is sufficiently demonstrated to resolve in depth the problems raised, because the jurisprudential assumptions for this purpose are met, given the connectedness of the environment with fundamental rights.

(...)

p. 15

4. Due to multiple simultaneous causes, derived, connected, or isolated, that negatively impact the ecosystem, environmental issues occupy a prominent place on the international agenda, not only of scientists and researchers, but also of politicians, the common people and, naturally, judges and lawyers. Day to day the news, articles and reports of different tiers presenting the gravity of the planetary conditions are abundant. There is a growing threat to the possibility of existence of human beings.

These imminent dangers are evident in phenomena such as the excessive increase of temperatures, the thawing of the poles, the massive extinction of animal and plant species, the increasingly frequent occurrence of meteorological events and disasters outside margins previously considered normal. There are unusual and unforeseen rainy seasons, permanent droughts, hurricanes or destructive tornadoes, strong and unpredictable tidal waves, draining rivers, increasing disappearance of species, etc.

(...)

p. 16

Humanity is the main actor responsible for this scenario, as its global hegemonic position led to the adoption of an anthropocentric and selfish model, whose characteristic features are harmful to environmental stability, namely: i) the excessive demographic growth; ii) the adoption of a rapid development system guided by consumerism and the current political-economic systems; and iii) the excessive exploitation of natural resources.

(...)

p. 18

We are all obligated to stop exclusively thinking about our self-interest. We must consider the way in which our daily actions and behaviors affect society and nature. In the words of Peces-Barba, we must shift from “private ethics,” focused on private goods, to “public ethics,” understood as the implementation of moral values that aim to achieve a particular notion of social justice.

(...)

5.2 The protection of fundamental rights not only involves the individual, but implicates the “other.” The neighbor is otherness; its essence, the other people that inhabit the planet, also include other animal and plant species. But in addition, this includes the unborn, who also deserve to enjoy the same environmental conditions that we have.

5.3 The environmental rights of future generations are based on the (i) ethical duty of the solidarity of the species and (ii) on the intrinsic value of nature.

(...)

p.20

The first is explained by the fact that natural resources are shared by all inhabitants of Planet Earth, and by their descendants or future generations who do not yet have a physical hold of them, but who are tributaries, recipients, and owners of them, even if they, in a contradictory way, are increasingly insufficient and limited. Thus, without an equitable and prudent approach to consumption, the future of humankind may be compromised due to the scarcity of essential life resources. In this way, solidarity and environmentalism are “related until they become the same.

(...)

The second transcends the anthropocentric perspective, and focuses on “ecocentric- anthropic” criteria, which places the human being on par with the environmental ecosystem, whose purpose is to avoid arrogant, dismissive, and irresponsible treatment of the environmental resources, and its entire context, to satisfy materialistic ends, without any protectionist or conservationist respect.

(...)

p. 21

What has been stated then, develops a binding legal relationship regarding the environmental rights of future generations, such as an “omission,” *whose impact translates into a limitation to the freedom of action of present generations, while simultaneously implicitly demanding new burdens of environmental commitments, to the extent that they take on the care and stewardship of natural resources and the future world.*

p. 22

6. In view of the foregoing, numerous regulations have emerged in the international field, *hard and soft law*, which constitute a global ecological public order and serves as guiding criteria for national legislation, as to resolve citizen complaints on the destruction of our habitat, in favor of the protection of the subjective rights of people, of present and future generations.

The most relevant legal instruments are the following:

*(6.1 discusses the International Covenant on Economic, Social and Cultural Rights, 6.2 discusses the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques as well as the additional protocol to the Geneva Convention and 6.3 discusses the Stockholm Declaration.)*

6.4 The Conference of the United Nations on the Environment and Development held in Rio de Janeiro in 1992: concerted with the objective of “...*elaborating strategies and measures to stop and reverse the*

*effects of environmental degradation in the context of the efforts directed to promote a sustainable and environmentally balanced environment, carried out both at the international and national levels...*”

6.5 The Framework Convention on Climate Change in Paris 2015: after several unsuccessful attempts to adopt a binding document for the states that consigned the current needs in environmental matters, in Paris this purpose was achieved, as the countries agreed upon:

*“... maintain and promote regional and international cooperation in order to mobilize more vigorous and ambitious action to address the climate, by all parties and by non-parties, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples...”*

Never before has a tool of this type established binding measures to mitigate climate change, requiring countries to make concrete commitments to reduce pollution and the increase of global temperatures.

#### *7. (Description of 1991 Constitution and its impact on environmental governance)*

The Constitutional Court has played an important role with its pronouncements, and has designed a jurisprudential line welcoming the concepts and advances arising on the subject in the international and academic scene.

In this sense, it has analyzed the Constitution’s postulates from a “*green*” perspective, cataloging the Political Charter as an “*Ecological Constitution*” and elevating the environment to the category of fundamental rights.

(...)

p.30

10. The conservation of the Amazon is a national and global obligation, as it is the main environmental axis of the planet, and as such has been called the “*lung of the world...*”

(...)

The international community has generated various commitments to achieve its conservation; the Amazonian Cooperation Treaty (TCA) should be highlighted, as its main objective is the “*...promotion of the harmonious development of the Amazon, and the incorporation of its territories to the respective national economies, which is fundamental for maintaining the balance between economic growth and environmental preservation...*”

Likewise, in the aforementioned Framework Convention on Climate Change in Paris of 2015, where Colombia, among other responsibilities, agreed to reducing “deforestation in the Colombian Amazon”;

and with this purpose promoted the “Sustainable Colombia Initiative” and the “Vision Amazon” Fund, for which the following pillars were agreed upon (...)

(...)

p. 34

The factors reviewed directly generate deforestation in the Amazon, causing short, medium, and long term imminent and serious damage to the children, adolescents and adults who filed this lawsuit, and in general, all inhabitants of the national territory, including both present and future generations, as it leads to rampant emissions of carbon dioxide (CO<sub>2</sub>) into the atmosphere, producing the greenhouse gas effect, which in turn transforms and fragments ecosystems, altering water sources and the water supply for population centers and land degradation.

To this we must add the threat that deforestation brings to the species of flora and fauna native to that region, as highlighted by various reports from expert organizations, where it is specified that about 57% of tree species are in danger, including animals such as the jaguar or the Andean bear, for example.

This previous reality, in contrast with the legal environmental principles of i) precaution; intergenerational equity; and (iii) solidarity, leads the Court to conclude the following:

11.1 Relative to the first of the aforementioned principles, there is no doubt that there is a risk of damage, given that according to the IDEAM, the increase in GHG emissions resulting from deforestation in the Amazon forest would generate an increase in Colombia’s temperature between “*0.7 and 1.1 degrees Celsius between 2011 and 2040,*” while for the period “*between 2041 and 2070*”, the estimates indicate an increase between “*1.4 and 1.7*” degrees Celsius, to reach 2.7 degrees Celsius “*in the period between 2071 and 2100.*”

Likewise, the mass reduction of the Amazon forest would break the ecosystem connection with the Andes, causing the probable extinction or threat of the subsistence of species inhabiting that corridor, generating “*damage in its ecological integrity.*”

Additionally, according to the IDEAM, GHG emissions due to deforestation would result in two main types of consequences related to rainfall. First, an increase in several regions of the country, a situation that would trigger an increase in water levels and thus, in runoff, spreading polluting agents coming from water. Second, a deficit in other departments, causing a reduction in the water supply, as well as prolonged droughts.

The irreversibility of the damage and the scientific certainty, both additional components of the precautionary principle, are also evident since the GHG emitted from deforestation, constitutes 36% of the forestry sector, rapidly becoming an uncontrollable component of CO<sub>2</sub> emissions; information supported, in detail, by the studies conducted by the IDEAM, the Ministry of Foreign Affairs, the Ministry of Environment and Sustainable Development, the UNDP, and many others.

11.2 In terms of intergenerational equity, the transgression is obvious, as the forecast of temperature increase is 1.6 degrees in 2041 and 2.14 in 2071; future generations, including children who brought this action, will be directly affected, unless we presently reduce the deforestation rate to zero.

11.3 The principle of solidarity, for the specific case, is determined by the duty and co-responsibility of the Colombian state to stop the causes of the GHG emissions from the abrupt forest reduction in the Amazon; thus, it is imperative to adopt immediate mitigation measures, and to protect the right to environmental welfare, both of the plaintiffs, and to the other people who inhabit and share the Amazonian territory, not only nationals, but foreigners, together with all inhabitants of the globe, including ecosystems and living beings.

11.3 The previous reality, in addition to transgressing the regulations pertaining to the Environmental Charter of the country, and the international instruments that make up the global ecological public order, constitutes a serious ignorance of the obligations acquired by the State in the Framework Convention on Climate Change of Paris 2015, where Colombia, among other commitments, undertook an agreement to reduce the “*deforestation in the Colombian Amazon,*” with the objective of reducing deforestation to zero in that region by 2020, as achieving it, according to the Ministry of Environment and Sustainable Development, would ensure that “...44 megatons of greenhouse gases would not enter the atmosphere and 100,000 hectares of agriculture in areas of high deforestation would be more friendly to the environment...”

It is up to the authorities to respond effectively to the specific questions of the problem, among which, it is important to highlight the urgent need to adopt mitigation and corrective measures for i) the excessive expansion of illicit crops and illegal mining that unreasonably destroy the Amazonian forest; ii) fill the void left by the FARC and paramilitaries to make an active state presence in favor of the conservation of Amazonian territories that in the context of armed conflict were conquered by insurgent groups, merciless predators, irrational colonizers, and generally, people and organizations outside the law; iii) prevent and mitigate the growing fires, deforestation, and unreasonable expansion of the agricultural frontier; iv) the lack of prevention of the consequences inherent to constructing roads, granting titles to property and mining concessions; v) the expansion of large-scale agroindustrial and livestock farming; vi) the preservation of this ecosystem due to its importance in regulating the global climate; vii) the lack of scientific calculations of the release of tons of carbon through burning and the loss of biomass, which constitutes the vegetation cover; and viii) to confront climate change due to the destruction of the Amazon rainforest in the national territory.

12. Therefore, the excessive intensification of this problem is evident, showing the ineffectiveness of governmental measures adopted to confront this, and, from that perspective, granting the protection for the breach of fundamental guarantees to water, air, a dignified life, health, among others in connection with the environment.

(...)

13. It is clear that despite several international commitments, legislation, and jurisprudence on the subject, the Colombian State has not efficiently tackled the problem of deforestation in the Amazon.

(....)

p. 42

In this way, the aforementioned environmental authorities are not fulfilling their duty to evaluate, control, and monitor natural resources, nor to impose and implement sanctions in the case that there is a violation of environmental protection norms in their jurisdiction, despite being able to request help from other national and local agencies in order to protect natural resources in the case they lack sufficient resources

13.2 (....)The deforestation in natural national parks is proof of the negligence in fulfilling the legal functions assigned to the Natural National Parks of Colombia (...)

*(Further discusses the negligence of municipalities in the Amazon)*

p.45

14. Therefore, in order to protect this ecosystem vital for our global future, just as the Constitutional Court declared the Atrato river, the Colombian Amazon is recognized as a “subject of rights,” entitled to protection, conservation, maintenance and restoration led by the State and the territorial agencies.

Consequently, we grant the relief, and order the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development, in coordination with the actors of the National Environmental System and the participation of the plaintiffs, the affected communities, and the interested population in general, to formulate a short, medium, and long term action plan within the next four (4) months from today’s notice, to counteract the rate of deforestation in the Amazon, tackling climate change impacts.

This plan will aim to mitigate the early deforestation warnings issued by the IDEAM.

Likewise, the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development, will be ordered to formulate within the next five months following today’s notice, with the active participation of the plaintiffs, the affected communities, scientific organizations or environmental research groups, and the interested population in general, the construction of an “**intergenerational pact for the life of the Colombian Amazon - PIVAC**” to adopt measures aimed at reducing deforestation to zero and greenhouse gas emissions, and has national, regional, and local implementation strategies of a preventative, mandatory, corrective, and pedagogical nature, directed towards climate change adaptation.

Also, all the municipalities of the Colombian Amazon, within the next five months following today’s notice, are compelled to update and implement the Land Management Plans, and when relevant, include

an action plan to reduce deforestation to zero in its territory, which should encompass preventative, mandatory, corrective, and pedagogical measurable strategies, oriented towards climate change adaptation.

The Corporation for the Sustainable Development of the South of the Amazon - Corpoamazonia, the Corporation for the Sustainable Development of the North and the East of the Amazon -CDA, and the Corporation for the Sustainable Development of the Special Management Area La Macarena - Cormacarena will be ordered, within the next five months following today's notice and regarding its jurisdiction, an action plan that counteracts through police, judicial, or administrative measures, the deforestation problems reported by the IDEAM.

In addition, within their duties, the defendants will have to, in the forty-eight hours following the completion of this ruling, increase actions tending to mitigate deforestation while carrying out the modifications contained in the aforementioned mandate. Within the responsibilities assigned, they must urgently present the complaints before the corresponding administrative and judicial entities.

### 3. DECISION

In merit of the above, the Supreme Court of Justice, in a Civil Appeals Court, administering justice in the name of the Republic and by authority of the Constitution and the Law,

#### RESOLVES:

**FIRST, REVOKE** the sentence filed on the date and place mentioned before, and instead, grant the protection requested.

Consequently, it **ORDERS** that the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development, in coordination with the actors of the National Environmental System and the participation of the plaintiffs, the affected communities and interested population in general, to formulate a short, medium, and long term action plan within the next four (4) months from today's notice, to counteract the deforestation rate in the Amazon, tackling climate change impacts.

This plan will aim to mitigate the early deforestation warnings issued by the IDEAM.

Similarly, it **ORDERS** the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development, to formulate in the five (5) following months from today's notice, with the active participation of the plaintiffs, affected communities, scientific organizations or environmental research groups, and interested population in general, the construction of an "**intergenerational pact for the life of the Colombian Amazon - PIVAC**," to adopt measures aimed at reducing deforestation to zero and greenhouse gas emissions, and has national, regional

and local implementation strategies of a preventative, mandatory, corrective, and pedagogical nature, directed towards climate change adaptation.

In the same manner, it **ORDERS** all municipalities in the Colombian Amazon, within the next five months (5) following today's notice, to update and implement Land Management Plans, and when relevant, include an action plan to reduce deforestation to zero in its territory, which should encompass preventative, mandatory, corrective, and pedagogical measurable strategies, oriented towards climate change adaptation.

Last, it **ORDERS** the Corporation for the Sustainable Development of the South Amazon - Corpoamazonia, the Corporation for the Sustainable Development of the North and East Amazon - CDA, and the Corporation for the Sustainable Development for the Special Management Area in the Amazon - Cormacarena, within the next five (5) months following today's notice and regarding its jurisdiction, to create an action plan that counteracts through police, judicial or administrative measures, the deforestation problems reported by the IDEAM.

In addition, within their duties, the defendants will have to, in the forty-eight hours following the completion of this ruling, increase actions tending to mitigate deforestation while carrying out the modifications contained in the aforementioned mandate. Within the responsibilities assigned, they must urgently present the complaints before the corresponding administrative and judicial entities.

**SECOND**, Communicate in writing what was decided to those interested and send a file to the Constitutional Court for its eventual review.

#### **NOTIFY AND IMPLEMENT**

AROLDO WILSON QUIROZ MONSALVE (President of the Chamber)

MARGARITA CABELLO BLANCO

ALVARO FERNANDO GARCIA RESTREPO (issuing minority opinion)

LUIS ALONSO RICO PUERTA (issuing minority opinion)

ARIEL SALAZAR RAMIREZ (issuing minority opinion)

OCTAVIO AUGUSTO TEJEIRO DUQUE

LUIS ARMANDO TOLOSA VILLABONA